

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3650 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMED HABIB ABDULBHAI KHERADA

Versus

STATE OF GUJARAT

Appearance:

MR VIJAY H PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 30/06/2000

ORAL JUDGEMENT

The petitioner who is a kerosene dealer is aggrieved by communication dated 19.9.1990 of the Mamlatdar, Modasa. By the impugned communication, the petitioner has been informed that the Kerosene Dealer licence was in the name of the petitioner's late father and on his death, the petitioner cannot be allotted the quota of kerosene for his alleged dealership.

2. On behalf of the petitioner, it is explained that the petitioner was carrying on business in the name and

style of Abdullabhai Karimbhai Kherada and the petitioner Mohmed Habib Abdullabhai Kherada is the sole proprietor. It is submitted that his father was only helping him in his proprietary business. The kerosene dealer's licence was also obtained by the petitioner in his own name for carrying on trade in the aforesaid name and style. Ld. Counsel appearing for the petitioner contends that the Mamlatdar in issuing the impugned communication proceeded under a misconception that the kerosene dealer's licence stood in the name of the late father of the petitioner and on the death of the father, the petitioner could not be allowed to run the dealership business.

3. I have also heard the Learned Counsel appearing for the State in support of the impugned communication.

4. In support of the petition, the petitioner has filed his Sales Tax Registration Certificate under the Gujarat Sales Tax Act which is marked as Annexure A. Reading of the said document shows that the name and style of the business is mentioned as Abdullabhai Karimbhai Kherada and the petitioner's name is mentioned as one carrying on the business in that name. The petitioner has filed a certificate issued under the provisions of the Bombay Shops and Establishments Act which is marked as Annexure B. In the said document the name of the concern is shown at the top as Abdullabhai Karimbhai Kherada and the proprietor's name is mentioned as Mohmed Habib Abdullabhai Kherada. On behalf of the petitioner, it is therefore submitted that it was the petitioner who was the dealer for the purpose of payment of Sales Tax and held a shop under the Bombay Shops and Establishments Act. The kerosene dealer licence was also issued in his favour in the name and style of his firm mentioned above. In the aforesaid circumstances, the Mamlatdar erred in issuing the impugned notification at Annexure E dated 19.9.90 refusing him to allot the quota of kerosene. The facts mentioned by the petitioner require an inquiry.

5. On behalf of the State by producing a copy of the licence, it is pointed out that kerosene dealer's licence mentions only the name of Abdullabhai Karimbhai Kherada indicating that the kerosene dealer licence stood in the name of the late father of the petitioner.

6. During the pendency of this petition by an interim order, the petitioner continued to carry on his trade. In the circumstances now obtaining, after such a long period it would not be proper to direct the discontinuance of the petitioner's business. It can be

presumed that the petitioner must have got his licence renewed. The petitioner is therefore disposed of with a direction to the respondents that if the petitioner makes a fresh application or an application for renewal of his existing licence, the same be considered by the Authorities on its own merits. The petition succeeds with the aforesaid direction and the impugned communication dated 19.9.1990 of the Mamlatdar is hereby set aside. There shall be no orders as to costs. Rule made absolute.

(D.M.Dharamadhikari, CJ)

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